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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARK ANTHONY LANDAVERDE,  
Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Defendant.

Case No. CV 15-07886-RAO

**MEMORANDUM OPINION AND  
ORDER**

**I. INTRODUCTION**

Plaintiff Mark Anthony Landaverde (“Plaintiff”) challenges the Commissioner’s denial of his applications for a period of disability and disability insurance benefits (“DIB”) and Supplemental Security Income (“SSI”). For the reasons stated below, the decision of the Commissioner is REVERSED and the action is REMANDED for further proceedings consistent with this Order.

**II. PROCEEDINGS BELOW**

On March 8, 2012, Plaintiff applied for DIB and SSI alleging disability beginning March 18, 2010. (Administrative Record (“AR”) 23). His applications were denied initially on June 21, 2012, and upon reconsideration on February 15,

1 2013. (AR 68-103.) On March 27, 2013, Plaintiff filed a written request for  
2 hearing, and a hearing was held on February 6, 2014. (AR 40-67, 122-23.)  
3 Represented by counsel, Plaintiff appeared and testified. (AR 48-64.) At the  
4 conclusion of the hearing, the Administrative Law Judge (“ALJ”) determined that  
5 he needed to obtain evidence from a medical expert. (AR 65.) Accordingly, on  
6 February 21, 2014, the ALJ provided evidence for review and propounded  
7 interrogatories to an impartial medical expert, Eric Puestow, M.D.<sup>1</sup> (AR 1344-54.)  
8 Dr. Puestow provided a response to the interrogatories on March 3, 2014. (AR  
9 1355-63.) On March 6, 2014, the ALJ notified Plaintiff’s counsel that Dr.  
10 Puestow’s response was available in the file for his review, and offered him the  
11 opportunity to comment on the response, submit more evidence, request the  
12 submission of cross interrogatories to Dr. Puestow, or request a supplemental  
13 hearing. (AR 256.) Plaintiff’s attorney did not submit a response to the offer of  
14 additional relief. (AR 23.) The ALJ also propounded interrogatories to an  
15 impartial vocational expert (“VE”), Carmen Roman, to which Ms. Roman  
16 responded. (AR 269-86.) Again, Plaintiff’s counsel was offered an opportunity to  
17 respond, but no response was received. (AR 23, 259-67, 287-88.) On April 25,  
18 2014, the ALJ found that Plaintiff had not been under a disability, pursuant to the  
19 Social Security Act,<sup>2</sup> from March 18, 2010 through the decision date. (AR 33.)  
20 The ALJ’s decision became the Commissioner’s final decision when the Appeals  
21 Council denied Plaintiff’s request for review. (AR 1-7.) Plaintiff filed this action  
22 on October 7, 2015. (Dkt. No. 1.)

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23 <sup>1</sup> The ALJ initially propounded interrogatories to a medical expert, Vern Laing,  
24 M.D., who did not provide a response to the interrogatories. (AR 160-61, 1333-  
25 42.) The interrogatories previously propounded to Dr. Liang were subsequently  
26 propounded to Dr. Puestow. (AR 160.)

27 <sup>2</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they  
28 are unable to engage in any substantial gainful activity owing to a physical or  
mental impairment expected to result in death, or which has lasted or is expected to  
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 The ALJ followed a five-step sequential evaluation process to assess whether  
 2 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,  
 3 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged  
 4 in substantial gainful activity since March 18, 2010, the alleged onset date  
 5 (“AOD”). (AR 26.) At **step two**, the ALJ found that in combination, Plaintiff has  
 6 the severe impairments of Wegener’s granulomatosis,<sup>3</sup> obesity, and mixed headache  
 7 disorder. (*Id.*) At **step three**, the ALJ found that Plaintiff “does not have an  
 8 impairment or combination of impairments that meets or medically equals the  
 9 severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix  
 10 1.” (*Id.*)

11 Before proceeding to step four, the ALJ found that Plaintiff has the residual  
 12 functional capacity (“RFC”) to:

13 [P]erform sedentary work . . . except[ ] he can lift and carry up to ten  
 14 pounds occasionally and five pounds frequently; he can stand and  
 15 walk for two to four hours, in combination, and sit, up to eight hours,  
 16 cumulatively in an eight-hour workday; he can occasionally climb,  
 17 bend, kneel, reach above shoulder level, and crawl; and he may  
 18 occasionally perform work around extreme heat, cold, dense fumes,  
 19 dust, smoke, and around dangerous moving machinery.

20 (AR 27.)

21 At **step four**, based on Plaintiff’s RFC and the VE’s opinion, the ALJ found  
 22 that Plaintiff is unable to perform any past relevant work. (AR 31.) At **step five**,  
 23 the ALJ found that there are jobs that exist in significant numbers in the national  
 24 economy that Plaintiff can perform. (AR 32.) Accordingly, the ALJ found that

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26 <sup>3</sup> Wegener’s granulomatosis is a rare autoimmune disorder in which blood vessels  
 27 become inflamed and restrict blood flow to various organs. *See* Mayo Clinic  
 28 website, <http://www.mayoclinic.org/diseases-conditions/granulomatosis-with-polyangiitis/home/ovc-20167226> (last visited Aug. 24, 2016).

1 Plaintiff “has not been under a disability . . . from March 18, 2010, through the date  
2 of [the ALJ’s] decision.” (*Id.*)

### 3 **III. STANDARD OF REVIEW**

4 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s  
5 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are  
6 supported by substantial evidence, and if the proper legal standards were applied.  
7 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’  
8 means more than a mere scintilla, but less than a preponderance; it is such relevant  
9 evidence as a reasonable person might accept as adequate to support a conclusion.”  
10 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*  
11 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial  
12 evidence requirement “by setting out a detailed and thorough summary of the facts  
13 and conflicting clinical evidence, stating his interpretation thereof, and making  
14 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

15 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a  
16 specific quantum of supporting evidence. Rather, a court must consider the record  
17 as a whole, weighing both evidence that supports and evidence that detracts from  
18 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.  
19 2001) (citations and internal quotations omitted). “‘Where evidence is susceptible  
20 to more than one rational interpretation,’ the ALJ’s decision should be upheld.”  
21 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*  
22 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins*, 466 F.3d at 882  
23 (“If the evidence can support either affirming or reversing the ALJ’s conclusion, we  
24 may not substitute our judgment for that of the ALJ.”). The Court may review only  
25 “the reasons provided by the ALJ in the disability determination and may not affirm  
26 the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630  
27 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

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#### 1 **IV. DISCUSSION**

2 Plaintiff contends that the ALJ: (1) erred in the credibility determination; (2)  
 3 erred in the determination of Plaintiff's RFC because he "failed to consider that Dr.  
 4 Puestow [on whose opinion the ALJ relied] did not provide an opinion regarding  
 5 Plaintiff's ability to sit," and "the ALJ should have re-contacted Dr. Puestow for a  
 6 complete response to this interrogatory;" and (3) erred in his Step Five finding by  
 7 failing to provide a complete hypothetical to the VE. (Memorandum in Support of  
 8 Plaintiff's Complaint ("Pl. Memo.") at 2-10) (Dkt. No. 25).) The Commissioner  
 9 contends that: (1) the ALJ's credibility determination was proper; (2) substantial  
 10 evidence supports the ALJ's RFC finding that Plaintiff could sit for up to eight  
 11 hours per day, including Dr. Puestow's opinion that did not limit Plaintiff's sitting;  
 12 and (3) substantial evidence supports the ALJ's Step Five finding. (Memorandum  
 13 in Support of Defendant's Answer ("Def. Memo.") at 2-8) (Dkt. No. 26).)

##### 14 **A. The ALJ Erred In Evaluating Plaintiff's Subjective Complaints**

15 Plaintiff argues that the ALJ failed to provide specific, clear and convincing  
 16 reasons supported by substantial evidence in the record for rejecting his subjective  
 17 symptoms and functional limitations. (Pl. Mem. at 2-8; Plaintiff's Reply to  
 18 Memorandum in Support of Defendant's Answer ("Pl. Reply") at 1-3.) The  
 19 Commissioner argues that the ALJ provided specific, clear and convincing reasons  
 20 for rejecting Plaintiff's subjective complaints, including "normal" objective  
 21 findings, effective treatment, and daily activities inconsistent with his allegations.  
 22 (Def. Memo. at 2-5.) For the reasons set forth below, the Court generally agrees  
 23 with Plaintiff.

##### 24 **1. Plaintiff's Testimony**

25 At the administrative hearing, Plaintiff testified that he is 34 years old and is  
 26 a high school graduate. (AR 50.) He last worked in March 2010 for Northeast  
 27 Valley Health Care Center as Patient Navigator. (AR 51.) Starting on March 18,  
 28 2010, he experienced extreme nausea, diarrhea, joint pain, and extreme fatigue that

1 prevented him “from being able to move along” or “drive from clinic to clinic.”  
2 (AR 57-58.) He had to “vomit throughout the day,” and his symptoms were  
3 “constant.” (AR 58.) He could walk and sit for about 15 minutes, before changing  
4 positions. (AR 59.) He could not lift any weight without experiencing “an extreme  
5 amount of pain.” (*Id.*) His symptoms have persisted since March 2010 and have  
6 gotten worse. (*Id.*) His wife has helped him wash and bathe since March 2010.  
7 (AR 60.) His wife cooks for him. (*Id.*) He sometimes bleeds from the nose and  
8 has blood in the stool. (AR 60-61.) He has difficulty breathing, and sometimes  
9 feels “like my chest is caving in and I can’t breathe.” (AR 61.) His medications do  
10 “some benefit,” but cause him to get “extremely drowsy and mental fog.” (*Id.*) He  
11 has “inflammation in all my body,” which prevents him from moving around or  
12 bending down. (AR 62.) If he tries to write or “do anything with my hands,” his  
13 hands cramp up and he has joint pain. (*Id.*) He would need 8-12 bathroom breaks  
14 in an eight-hour period. (AR 63.) He takes multiple rests throughout the day. (*Id.*)  
15 He feels he cannot do any work because of the daily pain that is “really  
16 excruciating.” (AR 63-64.)

17 In an Exertion Questionnaire dated May 18, 2012, Plaintiff reported that he  
18 has constant chronic pain in his joints, muscles, nerves, and veins, even with  
19 medication; nausea; and “brain fog.” (AR 193, 195.) He sits “throughout the day,”  
20 and has to stand after a couple of hours of sitting. (AR 193.) He can walk about 15  
21 to 20 feet, but he gets stiff and pain shoots through his legs, veins and body. (*Id.*)  
22 He can lift “simple things,” such as a glass of water or clothes. (AR 194.) He can  
23 carry a five pound grocery bag for about 15 to 20 feet. (*Id.*) If he drives more than  
24 four miles, he “get[s] really fatigued and get[s] sore and stiff and get[s] pain.” (*Id.*)  
25 His wife does the chores because doing chores causes “flare-ups” of his symptoms.  
26 (AR 195.)

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## 2. Applicable Legal Standards

“In assessing the credibility of a claimant’s testimony regarding subjective pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the ALJ does not find evidence of malingering, the ALJ must provide specific, clear and convincing reasons for rejecting a claimant’s testimony regarding the severity of his symptoms. *Id.* The ALJ must identify what testimony was found not credible and explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at 834.

## 3. Discussion

“After careful consideration of the evidence,” the ALJ found that Plaintiff’s “medically determinable impairments could reasonably be expected to cause the alleged symptoms;” but found that Plaintiff’s “statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible for the reasons explained in this decision.” (AR 30.) The ALJ relied on the following reasons: (1) lack of supporting objective evidence; (2) lack of treatment consistent with the alleged degree of impairment; and (3) activities of daily living. (*Id.*) No malingering allegation was made, and therefore, the ALJ’s reasons must be “clear and convincing.”

### a. Reason No. 1: Lack of Supporting Objective Evidence

The ALJ discounted Plaintiff’s credibility because of the “lack of objective medical evidence to substantiate his claims.” (AR 30.) In discussing the objective



1 evidence, the ALJ noted that medical expert Dr. Puestow found Plaintiff's  
2 "subjective statements inconsistent with the objective findings, noting that it was  
3 very difficult to say Wegener's granulomatosis would produce these symptoms."  
4 (AR 28, 1358.) Plaintiff argues that the ALJ "grossly misstated and  
5 mischaracterized Dr. Puestow's responses." (Pl. Memo. at 4.) As Plaintiff  
6 acknowledges, Dr. Puestow opined, in response to a question whether Plaintiff's  
7 subjective statements were consistent with the objective medical treatment history:  
8 "Very difficult to say Wegener's may produce these symptoms, but severity cannot  
9 be supported by objective findings." (Pl. Memo. at 5; AR 1358.) Plaintiff fails to  
10 demonstrate a gross misstatement or mischaracterization. To the extent Plaintiff  
11 argues that the ALJ relied solely on Dr. Puestow's opinion in finding that the  
12 objective evidence did not support Plaintiff's claims, his argument fails. (Pl.  
13 Memo. at 5.)

14 The ALJ noted that Plaintiff was diagnosed with Wegener's granulomatosis  
15 and polyarthralgias in February 2012, and his symptoms resolved when his  
16 Prednisone was increased. (AR 28, 316.) In March through November 2012, and  
17 in March 2013, Plaintiff reported no side effects from his medications and was  
18 doing well with improved symptoms. (AR 28, 383-91, 920.) Although Plaintiff  
19 complained of headaches in July and October 2012, an MRI of Plaintiff's brain in  
20 September 2012 was normal. (AR 28, 916.) In August 2013, after chemotherapy  
21 treatment for Wegener's granulomatosis, a chest x-ray and angiogram showed  
22 Plaintiff's left lower lobe was consolidated with mild interstitial prominence, his  
23 lungs were clear, his cardiac silhouette was within normal limits, his right upper  
24 and left lower lobe infiltrates were stable, and he had left lower lobe pneumonia.  
25 (AR 28, 1137-38, 1141, 1143.) An August 2013 ECG showed sinus tachycardia,  
26 but was otherwise normal. (AR 28, 1139.) Plaintiff does not dispute these  
27 findings. (Pl. Memo. at 2-6; Pl. Reply at 2.)

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1           However, remand on this issue is warranted for consideration of evidence  
2 that Plaintiff tendered after the ALJ issued his decision. On August 4, 2014,  
3 Plaintiff submitted to the Appeals Council a Physical Residual Functional Capacity  
4 Questionnaire completed by treating physician Dr. Ramesh Kesavalu, dated June  
5 27, 2014, assessing Plaintiff's RFC at less than sedentary as of 2011. (AR 1364-  
6 68.) The Appeals Council considered Dr. Kesavalu's opinion and made the  
7 evidence a part of the record. (AR 2, 6.) Because the Appeals Council considered  
8 the new evidence and made it part of the record, the Court must consider it. *See*  
9 *Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1163 (9th Cir. 2012)  
10 ("[W]hen the Appeals Council considers new evidence in deciding whether to  
11 review a decision of the ALJ, that evidence becomes part of the administrative  
12 record, which the district court must consider when reviewing the Commissioner's  
13 final decision for substantial evidence.") (citation omitted). If the new evidence  
14 creates a reasonable possibility that it would change the outcome of the ALJ's  
15 decision, then remand is appropriate to allow the ALJ to consider the evidence.  
16 *Mayes*, 276 F.3d at 462.

17           The new evidence shows that Dr. Kesavalu, whose specialty is  
18 rheumatology, started treating Plaintiff in 2011 and sees him every two months.  
19 (AR 1365, 1368.) Plaintiff is diagnosed with Wegener's Granulomatosis, and has  
20 symptoms of fatigue, pain, and bleeding. (AR 1365.) The clinical findings and  
21 objective signs include obesity, fatigue, muscle weakness, and joint tenderness.  
22 (*Id.*) Plaintiff has had a "fair response to chemotherapy medications," but has  
23 nausea. (*Id.*) Plaintiff's impairments have lasted at least 12 months. (*Id.*) Plaintiff  
24 can occasionally lift 10 pounds, and can never lift 20 pounds. (AR 1366.) He can  
25 stand and/or walk about two hours in an eight-hour workday, and sit for less than  
26 six hours in an eight-hour workday. (*Id.*) Due to muscle and joint pains, Plaintiff  
27 needs a job that permits shifting positions at will from sitting, standing, or walking.  
28 (*Id.*) He would need a 10-minute break per hour. (*Id.*) He would be absent from

1 work more than three times a month. (*Id.*) He has decreased strength in the upper  
2 and lower extremities. (AR 1367.) He can occasionally bend and kneel, and can  
3 never climb, crouch, balance, or crawl. (*Id.*) He can frequently reach, and  
4 occasionally handle and finger. (*Id.*) He needs to avoid heavy machinery, heights,  
5 and slippery surfaces. (*Id.*) Dr. Kesavalu opined that the restrictions he assessed  
6 apply at least as early as 2011. (AR 1368.)

7 In discussing the lack of supporting objective evidence, the ALJ specifically  
8 found that the record lacked a medical opinion that supported Plaintiff's allegations.  
9 (AR 29.) The ALJ considered disability findings by Plaintiff's treating physicians,  
10 including Dr. Kesavalu, but rejected the findings because they were on an issue  
11 reserved to the Commissioner. (*Id.*) The ALJ further noted that the disability  
12 findings did not address the nature and severity of the impairments, whether the  
13 impairments met the durational requirements, and Plaintiff's RFC. (*Id.*) Dr.  
14 Kesavalu's June 2014 medical opinion addresses the areas identified by the ALJ  
15 and creates a reasonable possibility that it would change the outcome of the ALJ's  
16 decision. *See Mayes*, 276 F.3d at 462. Accordingly, remand is appropriate.

17 On remand, the ALJ shall review and consider Dr. Kesavalu's June 2014  
18 opinion as part of the objective evidence, and reevaluate Plaintiff's credibility.

19 **b. Reason No. 2: Treatment Not Consistent with Alleged**  
20 **Degree of Impairment**

21 The ALJ found that the "amount, frequency, and intensity of [Plaintiff's]  
22 treatment are not consistent with the alleged degree of impairment." (AR 30.) The  
23 ALJ noted that Plaintiff's treatment included Prednisone and chemotherapy, that the  
24 Prednisone helped, and that Plaintiff reported no side effects from his medications.  
25 (AR 28.) The record further indicates that Plaintiff was treated with Vicodin,  
26 Norco, Neurontin, Methotrexate, high dosages of Prednisone, and chemotherapy; he  
27 was under the care of numerous specialists; and he was admitted to the hospital on  
28 several occasions for treatment. (AR 322, 324, 327, 358, 383, 760, 916, 969, 994,

1 1233, 1309, 1328.) There is no evidence in the record that more frequent or  
 2 aggressive treatment was available to treat Plaintiff's conditions, and the ALJ was  
 3 not qualified to draw his own inference regarding whether such treatment was  
 4 available. *See Tran v. Colvin*, 2016 WL 917891, at \*6-7 (C.D. Cal. Mar. 8, 2016)  
 5 (finding no support for ALJ's finding that surgery or more aggressive treatments  
 6 were available options to treat claimant's conditions, and stating that an ALJ is not  
 7 qualified to draw inferences regarding whether more aggressive treatment is  
 8 available to treat a claimant's conditions) (citing *Lapeirre-Gutt v. Astrue*, 382 F.  
 9 App'x 662, 664 (9th Cir. 2010) ("[a] claimant cannot be discredited for failing to  
 10 pursue non-conservative treatment options were none exist") (citations omitted);  
 11 *Boitnott v. Colvin*, 2016 WL 362348, at \*4 (S.D. Cal. Jan. 29, 2016) (an ALJ is not  
 12 qualified to draw his own inference regarding whether more aggressive courses of  
 13 treatments were available)).

14 The Court finds that this reason is not a clear and convincing reason,  
 15 supported by substantial evidence, to discount Plaintiff's credibility.

### 16 **c. Reason No. 3: Activities of Daily Living**

17 The ALJ found that Plaintiff "described daily activities that are not limited to  
 18 the extent one would expect, given the complaints of disabling symptoms and  
 19 limitations." (AR 30.) The ALJ noted that although Plaintiff alleged that he could  
 20 not perform all basic household chores unassisted, run errands, go shopping alone,  
 21 or cook meals independently, he could watch television, read, pick up his daughter  
 22 from PreK and help her with her homework, and travel to Guatemala for two weeks  
 23 in April 2011. (AR 30, 789.) The ALJ concluded that Plaintiff's daily activities  
 24 "suggest that [Plaintiff] has better capacities than he has stated in the testimony and  
 25 written statements," as he "is able to spend a substantial part of the day in activities  
 26 involving the performance of functions readily transferable to competitive work."  
 27 (AR 30.)

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1 Inconsistencies between symptom allegations and daily activities may act as  
2 a clear and convincing reason to discount a claimant's credibility, *see Tommasetti v.*  
3 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Bunnell v. Sullivan*, 947 F.2d 341, 346  
4 (9th Cir. 1991), but a claimant need not be utterly incapacitated to obtain benefits.  
5 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). The fact that Plaintiff carried on  
6 limited daily activities such as watching television, reading, and picking up his  
7 daughter from PreK and helping her with her homework, does not detract from his  
8 overall credibility. Despite the ALJ's finding that Plaintiff was able to spend a  
9 substantial part of the day performing functions readily transferable to competitive  
10 work, the record does not show that these activities consumed a substantial part of  
11 Plaintiff's day, nor did the ALJ provide support for his finding. *See Vertigan v.*  
12 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). Further, the mere ability to perform  
13 some daily activities is not necessarily indicative of an ability to perform work  
14 activities because "many home activities are not easily transferable to what may be  
15 the more grueling environment of the workplace, where it might be impossible to  
16 periodically rest or take medication." *Fair*, 885 F.2d at 603; *see also Molina*, 674  
17 F.3d at 1112-13 (the ALJ may discredit a claimant who "participat[es] in everyday  
18 activities indicating capacities that are transferable to a work setting"). The critical  
19 difference between such activities "and activities in a full-time job are that a person  
20 has more flexibility in scheduling the former . . . , can get help from other persons .  
21 . . . , and is not held to a minimum standard of performance, as she would be by an  
22 employer." *Bjornson v. Astrue*, 671 F.3d 640, 647 (7th Cir. 2012) (cited with  
23 approval in *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014)). Indeed, even  
24 assuming that watching television and understanding PreK-level work is  
25 transferable to a competitive work environment, Plaintiff takes multiple rests per  
26 day and he relies on his wife to help with dressing, bathing, cooking, shopping,  
27 running errands, and doing chores. (AR 63, 789.) The ALJ acknowledged that  
28 Plaintiff needs help with basic chores, but appears to ignore the impact of the

1 limitations on Plaintiff's daily activities. (AR 14.)

2 To the extent the ALJ discounted Plaintiff's credibility based on a two-week  
3 trip to Guatemala in April 2011 (AR 30), the Court cannot find this reason clear and  
4 convincing. The ALJ did not provide findings as to how Plaintiff's trip to  
5 Guatemala undermines his credibility.<sup>4</sup> See *Santos v. Colvin*, 2015 WL 3886939, at  
6 \*6 (C.D. Cal. June 24, 2015) ("Merely referencing Plaintiff's [Mexico] trips was  
7 insufficient to establish a conflict with Plaintiff's testimony.") (citations omitted);  
8 *Chalfant v. Astrue*, 2011 WL 61612, at \*6 (C.D. Cal. Jan. 6, 2011) ("[P]laintiff's  
9 vacation to Hawaii does not inherently negate her allegations of pain and other  
10 symptoms, and the ALJ provided no explanation as to why she found plaintiff's  
11 ability to partake in such a vacation incompatible with plaintiff's complaints. Nor is  
12 it apparent from plaintiff's testimony about her trip that she spent a 'substantial  
13 part' of her time performing any physical task that translates to the work  
14 environment") (citation omitted).

15 The ALJ did not give clear and convincing reasons, supported by substantial  
16 evidence, for discounting Plaintiff's credibility. Furthermore, the ALJ must  
17 consider new evidence as part of the objective evidence in the record and reevaluate  
18 Plaintiff's credibility. Accordingly, remand is warranted on this issue.

19 **B. The Court Declines To Address Plaintiff's Other Arguments**

20 Having found that remand is warranted, the Court declines to address  
21 Plaintiff's remaining arguments that the ALJ erred in the RFC assessment<sup>5</sup> and

22  
23 <sup>4</sup> According to the record, Plaintiff was admitted to the hospital following the trip  
due to bloody diarrhea that occurred while he was in Guatemala. (AR 358-66.)

24 <sup>5</sup> The Court notes that the ALJ could have reasonably concluded that in leaving  
25 blank the limitations for sitting, Dr. Puestow did not find any limitations in  
26 Plaintiff's ability to sit, and the ALJ's duty to recontact Dr. Puestow did not arise.  
27 See *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005) ("An ALJ is required  
28 to recontact a doctor only if the doctor's report is ambiguous or insufficient for the  
ALJ to make a disability determination.") (citations omitted). On remand, the ALJ  
is free to reconsider Dr. Puestow's opinion in reassessing Plaintiff's RFC.

1 failed to pose a complete hypothetical to the VE at Step Five.<sup>6</sup> *Hiler v. Astrue*, 687  
 2 F.3d 1208, 1212 (9th Cir. 2012) (“Because we remand the case to the ALJ for the  
 3 reasons stated, we decline to reach [plaintiff’s] alternative ground for remand.”); *see*  
 4 *also Augustine ex rel. Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal.  
 5 2008) (“[The] Court need not address the other claims plaintiff raises, none of  
 6 which would provide plaintiff with any further relief than granted, and all of which  
 7 can be addressed on remand.”).

### 8 **C. Remand For Further Administrative Proceedings**

9 Because further administrative review could remedy the ALJ’s errors,  
 10 remand for further administrative proceedings, rather than an award of benefits, is  
 11 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)  
 12 (remanding for an award of benefits is appropriate in rare circumstances). Before  
 13 ordering remand for an award of benefits, three requirements must be met: (1) the  
 14 Court must conclude that the ALJ failed to provide legally sufficient reasons for  
 15 rejecting evidence; (2) the Court must conclude that the record has been fully  
 16 developed and further administrative proceedings would serve no useful purpose;  
 17 and (3) the Court must conclude that if the improperly discredited evidence were  
 18 credited as true, the ALJ would be required to find the claimant disabled on  
 19 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court  
 20 retains flexibility to remand for further proceedings “when the record as a whole  
 21 creates serious doubt as to whether the claimant is, in fact, disabled within the  
 22 meaning of the Social Security Act.” *Id.* (citation omitted).

23 Here, remand for further administrative proceedings is appropriate. On  
 24 remand, the ALJ shall (1) consider the new evidence consisting of Dr. Kesavalu’s  
 25 June 2014 opinion, and reassess Plaintiff’s subjective allegations in light of the new  
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27 <sup>6</sup> The Court notes that Plaintiff was given the opportunity to object to the  
 28 hypothetical to the VE prior to the ALJ’s decision, but Plaintiff did not do so. (AR  
 23.)

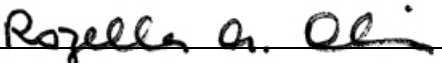
1 evidence; and (2) reassess Plaintiff's RFC, if warranted, and proceed through steps  
2 four and five to determine what work, if any, Plaintiff is capable of performing.

3 **V. CONCLUSION**

4 IT IS ORDERED that Judgment shall be entered REVERSING the decision  
5 of the Commissioner denying benefits, and REMANDING the matter for further  
6 proceedings consistent with this Order.

7 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
8 Order and the Judgment on counsel for both parties.

9  
10 DATED: August 25, 2016

  
\_\_\_\_\_  
11 ROZELLA A. OLIVER  
12 UNITED STATES MAGISTRATE JUDGE  
13

14 **NOTICE**

15 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,  
16 LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**  
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